



Louisiana Public Service Commission

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August 24, 2011

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Ms. Marlene H. Dortch
Secretary
Office of the Secretary
FEDERAL COMMUNICATIONS COMMISSION
445 12th St., SW
Room TW-A325
Washington, DC 20554

**Re: WC Docket No. 10-90, Connect America Fund
WC Docket No. 07-135, A Establishing Just and Reasonable Rates for Local
Exchange Carriers
WC Docket No. 05-337, High-Cost Universal Service Support
WC Docket No. 03-109, Lifeline and Link-Up
CC Docket Nos. 01-92, Developing a Unified Intercarrier Compensation
Regime
CC Docket No. 96-45, Federal-State Joint Board on Universal Service
GN Docket No. 09-51, A National Broadband Plan for Our Future**

Dear Madame Secretary:

On behalf of the Louisiana Public Service Commission, please accept the attached Comments in response to the "Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding" that was issued in the above-referenced Dockets on August 3, 2011. A copy of these comments was filed electronically using the FCC's Electronic Comment Filing System.

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FCC WC Docket Nos. 10-90 et al.
August 24, 2011 letter to Secretary Marlene H. Dortch

If you have any questions, please do not hesitate to contact me at (225) 342-4372.

Kindest regards,



Stephen Kabel
Staff Attorney

Attachments (1)

cc: All Commissioners
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Eve Kahao Gonzalez
Brandon Frey
Mr. Charles Tyler

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing a Unified Inter-carrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109

**COMMENTS
of the
LOUISIANA PUBLIC SERVICE COMMISSION**

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August 24, 2011

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Lifeline and Link-Up)	WC Docket No. 03-109

**COMMENTS
of the
LOUISIANA PUBLIC SERVICE COMMISSION**

The Louisiana Public Service Commission ("LPSC") hereby submits these comments in response to the "Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding" (*Further Inquiry*) issued by the Federal Communications Commission ("FCC" or "Commission") on August 3, 2011 in the above-referenced dockets. The FCC's *Further Inquiry* seeks specific comments on three specific plans that have been filed in response to the FCC's February 9, 2011 Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking ("NPRM"), which proposes modernizing the Universal Service Fund ("USF") and intercarrier compensation ("ICC") based on four core principles, to wit:

- 1) Modernizing the federal USF and ICC system for broadband;
- 2) Fiscal responsibility;
- 3) Ensuring accountability; and
- 4) Market-driven policies.¹

The LPSC is an executive agency of the State of Louisiana that is created by Article IV, Section 21 of the Louisiana Constitution of 1974. The LPSC is vested with authority to regulate public utilities and common carriers in the state of Louisiana, including wireline carriers. In accordance with its regulation of Louisiana telecommunications service providers, the LPSC performs all duties delegated to state commissions by the Telecommunications Act of 1996, including the designation of carriers of last resort (“COLRs”) and of eligible telecommunications carriers (“ETCs”).

With respect to the three plans addressed in the *Further Inquiry*, the LPSC must express concern at the lack of empirical data provided in support of the “America’s Broadband Connectivity” Plan (“ABC Plan”). The unavailability for examination of economic cost models has placed the LPSC at a distinct disadvantage in reviewing the LPSC’s more technical concerns about the mechanics of the ABC Plan.

The LPSC is particularly concerned about the ABC Plan’s proposal for preemption of state authority over intrastate telecommunications. In regards to the proposed regulatory scheme for voiceover internet protocol (“VoIP”), the LPSC disputes the ABC Plan’s incorporation of the doctrine of impossibility/inseverability as a basis for preemption. More specifically, the LPSC takes issue with the ABC Plan’s proposal that all traffic routed to or from the PSTN should be classified as jurisdictionally interstate in nature. The LPSC notes that wireless, PSTN and facilities-based VoIP are all easily severable, and that nomadic VoIP is constructively severable. As such, there is simply no

¹ NPRM at 7-8, ¶ 10.

justification for lumping all forms of voice communication into one broad classification, and so the LPSC must dispute the utility of the ABC Plan's proposal. Furthermore, the LPSC respectfully suggests that state regulators remain more qualified to evaluate the factual questions necessary for a jurisdictional determination than any other decision-maker. If this Commission should ultimately determine that VoIP is jurisdictionally interstate in nature (a decision that in all certainty exceeds the scope of these proceedings), then equity demands that that decision be based on a careful and studied consideration of the medium – not through rash generalization.

Equally troubling is the possibility that the ABC Plan's suggested preemption would affect broadband deployment initiatives created by state law. The LPSC has previously required commitments to deploy broadband as conditions for approval of various proceedings. It is possible that these initiatives could be interrupted if the FCC adopts the ABC Plan, which would frustrate the policy objectives behind universal service. Accordingly, the LPSC must encourage the FCC to ensure that any rule adopted in these proceedings should not preempt a state's authority to set broadband deployment priorities, especially those that are already in progress.

The ABC Plan's proposal to set ICC rates for intrastate telecommunications at \$0.0007 per minute of use ("MOU") for all traffic routed to or from the PSTN is of particular concern to the LPSC. Carriers with network costs greater than \$0.0007 per MOU could be unable to recover their costs, or worse, may be compelled to downgrade their respective infrastructures to such a level as to compromise the availability, affordability, and/or sustainability of services provided to their customer bases. Additionally, artificially low ICC rates with no guarantee of a predictable federal revenue

recovery mechanism could create uncertainty regarding ICC regimes and threaten continued network investment, operation and upgrades in rural areas.

Indeed, the ABC Plan proposes to institute competitive bidding in those wire centers where carriers refuse support from the Connect America Fund or the Advanced Mobility Fund/Satellite, or where the wire center has less than 35% broadband deployment on January 1, 2012. The LPSC notes, however, that this suggested regime creates an undue risk of disrupting the reliability of telecommunications infrastructure. Reverse auctions could cause USF funding to become unstable and unpredictable, and possibly even jeopardize future network investment in rural areas. Without carrier and/or investor confidence that costs may be recovered, it is all too likely that investments in improvements will not be made at all. Furthermore, it is an unfortunate fact that reverse auctions can result in a degradation of service or increase prices, as successful bidders may be compelled to sacrifice quality-control in order to recover their own costs. Considering the invaluable need for a reliable, long-term telecommunications infrastructure, the FCC should take no steps that could inadvertently encourage the cutting of corners.

Finally, the LPSC objects to the ABC Plan's suggested preemption of state authority to establish carrier of last resort ("COLR") obligations or to set criteria for designation as an eligible telecommunications carrier ("ETC"). The LPSC notes that there is no evidence that legacy COLR support has a detrimental effect on universal service objectives. While some states may be fortunate enough to have outgrown the need for COLR support, that funding remains an integral element to assuring the availability, affordability and sustainability of telephone service throughout Louisiana. And as with

jurisdictional determinations of VoIP, the LPSC respectfully contends that it is best suited to determine standards for ETCs and COLRs operating within the LPSC's territory due to its proximity to the factual causes of interruption of service or misapplication of rates.

The LPSC naturally then supports a cooperative, non-preemptive approach between federal and state regulators. Rather than adopt a problematic, comprehensive upheaval of the extant regulatory framework, the LPSC would prefer the FCC to instead establish consistent guidelines that can be tailored by state regulators to suit the particular needs of their respective jurisdictions. Accordingly, the LPSC maintains that any reforms of the current federal USF system should not disrupt or otherwise unduly burden existing state USF mechanisms.

In conclusion, the LPSC wishes to express its appreciation for the FCC's efforts to reform universal service funding and intracarrier compensation rates, and for the opportunity to address the options before this Commission. Nevertheless, the LPSC must respectfully urge this Commission to take deliberate heed of the ABC Plan's potentially injurious effects on consumers, on the telecommunications industry and on the nation's communications infrastructure.

Respectfully submitted,

**THE LOUISIANA PUBLIC SERVICE
COMMISSION**

/s/ Stephen Kabel

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Service Commission*

August 24, 2011